

The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.

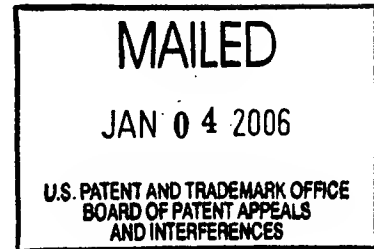
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER L. CASLER

Appeal No. 2006-0146
Application No. 09/995,933

ON BRIEF



Before BLANKENSHIP, SAADAT and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the rejection of claims 1, 2, 4, 9, 10 and 12. For the reasons stated *infra* we will not sustain the examiner's rejection of claims 1, 2, 4, 9, 10 and 12.

THE INVENTION

The invention relates to a method to use a lens for increasing the range of incident angles over which an infrared remote control may be used with an infrared remote-controlled electronic entertainment device. See page 4 of appellant's specification.

Claim 1 is representative of the invention and is reproduced below:

1. A method, performed by a retail purchaser of a previously-purchased remote-controlled retail electronic entertainment device, for retro-fitting said remote-controlled device to provide an increased acceptance angle for an infrared receiver thereof, the method comprising the steps of:

purchasing, on a retail basis and subsequent to a previous purchase of said remote-controlled device, a hemispheric lens, the hemispheric lens comprising a lens body, the lens body being fabricated from a dielectric material substantially transparent at an infrared wavelength received by the infrared receiver, the lens body having a substantially hemispheric convex outer surface, a substantially hemispheric concave inner surface, a substantially flat annular surface connecting the inner and outer hemispheric surfaces, and an adhesive layer comprising double-sided adhesive tape provided on the annular surface for securing the lens to a face of the remote-controlled retail electronic entertainment device over the infrared receiver thereof; and

after purchasing the hemispheric lens, securing the hemispheric lens to the face of the previously-purchased remote-controlled retail electronic entertainment device over the infrared receiver thereof, thereby increasing the acceptance angle over which infrared remote control signals may be received by the infrared receiver,

wherein the remote-controlled retail electronic entertainment device is a television, a video cassette recorder, a video cassette player, a DVD player, a DVD recorder, a cable television receiver, a satellite television receiver, a radio, a stereo, a hi-fi system, an audio cassette player, an audio cassette recorder, an audio CD player, an audio CD recorder, a home theatre system, a surround-sound system, an MP3 player, an MP3 recorder, a DVD-audio player, or a DVD-audio recorder.

THE REFERENCES

The references relied upon by the examiner are:

Keitoku	5,036,188	July 30, 1991
Takahashi et al. (Takahashi)	4,921,330	May 1, 1990
Haddock et al. (Haddock)	4,912,880	April 3, 1990
Harwood	GB 1,500,495	February 8, 1978

THE REJECTIONS AT ISSUE

Claims 1, 2, 4, 9, 10 and 12 stand rejected under 35 U.S.C. § 103 as being obvious over Keitoku in view of Harwood and Haddock or Takahashi. The examiner's rejection is set forth on pages 3 through 6 of the answer. Throughout the opinion we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellant and the examiner, for the reasons stated *infra* we will not sustain the examiner's rejections of claims 1, 2, 4, 9, 10 and 12 under 35 U.S.C. § 103.

Appellant argues, on page 4 of the brief, that the disclosure of Keitoku teaches away from installation of a hemispherical lens with a flat annular surface mounted on the front face of the device. Further, appellant argues: "The Examiner has not demonstrated any showing, teaching, or motivation in Keitoku or Harwood for combining the references or indicating the desirability of modifying the lens of Keitoku for mounting with a flat surface on the front face of the device." On page 5 of the brief, appellant argues:

No one skilled in the art would have looked to Harwood for such a teaching or suggestion, since the lens of Harwood is intended to be used underwater, while the lens of the appealed claims is intended to be used in air. As such, the respective optical design or optimization problems are completely different, and one cannot be used as a guide for the other.

The examiner responds, on pages 6 and 7 of the answer:

Although, the flat lens of prior art figures 8 and 9 may have been installed from within the device, this action does not preclude anything being attached to the outside surface at a later date. ... Although, Keitoku sets forth a solution in figs. 1-4, 6-7 of incorporating a hemispherical lens into the original product in order to solve the identified problem, Keitoku is not relied upon for the teaching of retrofitting, Harwood is. Therefore, the solution of providing the hemispheric lens by retrofit as set forth in Harwood rather than redesigning the original device to the [sic] increase the acceptance angles of the device is an appropriate obviousness rejection from the combined teachings of the references.

We disagree with the examiner's rationale. An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and arguments." *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). When determining obviousness, "[t]he factual inquiry whether to combine references must be thorough and searching." *Lee*, 277 F.3d at 1343, 61 USPQ2d at 1433, *citing McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001). "It must be based on objective evidence of record." *Id.* "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617. "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617, *citing McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993). The Federal Circuit states that, "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780,

1783-84 n.14 (Fed. Cir. 1992), citing *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In addition, our reviewing court stated, that when making an obviousness rejection based on combination, “there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by Applicant” in *Lee*, 277 F.3d at 1343, 61 USPQ2d at 1433 (quoting *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998)).

Claim 1 includes the limitation “securing the hemispheric lens to the face of the previously-purchased remote-controlled retail electronic entertainment device over the infrared receiver thereof, thereby increasing the acceptance angle over which infrared remote control signals may be received.” Independent claim 9 includes a similar limitation. The examiner has not provided any objective evidence that teaches or suggests this feature. Keitoku teaches an audiovisual apparatus which has a lens over the infrared photo-receiving device for the remote control. However, we find no suggestion in Keitoku, that a lens should be placed over a previously purchased audiovisual apparatus. Harwood teaches a wide-angle lens assembly for an underwater camera. We find no teaching or suggestion in Harwood that the lens assembly should be used over the infrared receiving element of a remote controlled device. The examiner asserts that Harwood provides suggestion to retrofit a device with a lens. We disagree. Harwood teaches that the lens is separate from the camera so that the camera is “rapidly returned to normal”, not as a “retrofit.” Thus, we do not

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